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Submission by Professor Petros Iosifidis¹

Executive Summary

I consider this Inquiry important and relevant as the successful UK Public Service Broadcasters BBC, ITV, C4, C5 and S4C are currently facing major challenges from Video on Demand (VoD) services. These challenges primarily concern competition for content from VoD services in a highly competitive broadcasting market characterised by shifts in audience behaviour. Audiences are watching less scheduled TV as they are attracted by the business model of global streaming services like YouTube, Amazon Prime Video and Netflix. Fierce competition from mainly US-based, unregulated global VoD players investing billions of pounds in content has escalated programming costs and made it difficult for tightly regulated PSBs with modest domestic UK budgets to compete. The BBC is facing unprecedented pressure regarding its licence fee income and commercial UK PSBs face pressure concerning their funding market models as advertising money is continuously diverted online to new streaming services.

Section 1 sets the scene by outlining the main issues. This submission is largely in favour of sustaining properly funded, universally available PSBs, who can deliver quality and original programming, alongside impartial and trusted news.

Section 2 responds to the 10 Questions in the Call for Evidence. Question 7 is answered by **Dr Ramon Lobato** and some information about Question 8 was provided by **Dr Imir Rashid**. At the end of the submission I have also attempted to respond to **Baroness Kidron's** question relating to International Context during the Oral Evidence session that I gave on 2 April 2019.

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Submission by Professor Petros Iosifidis

Section 1: Setting the Scene

I consider this Inquiry important and relevant as the successful UK Public Service Broadcasters (PSBs) are currently facing major challenges from Video on Demand (VoD) services. These challenges primarily concern competition for content from VoD services in a highly competitive broadcasting market characterised by shifts in audience behaviour. The UK media market has witnessed the entry of several VoD services including Netflix, Google and its subsidiary YouTube, Apple, Amazon and Facebook, all of which have contributed to a sharp rise of programming costs. The intensity of competition is likely to increase further with the forthcoming (autumn 2019) market entry of streaming service Apple TV+ and recent announcements of launching VoD services from Disney. Meanwhile, audiences (especially the younger generation) are watching less scheduled TV and they are instead attracted by the business model of VoD services, which is based on downloading programmes from a huge library and watch in own time. As a result, a growing share of TV and video viewing is heading towards the likes of YouTube, Amazon Prime Video and Netflix to the detriment of pay-TV consortia and traditional broadcasters, including PSBs.

The explosion of choice in terms of platforms and devices over which people can watch television has benefited them, but the greater competition from mainly US-based, unregulated global VoD players with deep pockets investing billions of pounds in content has escalated programming costs and made it difficult for tightly regulated PSBs with modest domestic UK budgets to compete. The BBC, in particular, the cornerstone of PSB according to regulator Ofcom,² faces unprecedented pressure regarding its licence fee income following cuts imposed in 2010 and the 2015 funding settlement. Commercial PSBs ITV, C4, C5 and S4C face pressure concerning their funding market models as advertising money is continuously diverted online to new streaming services.

² Ofcom, *Public service broadcasting in the digital age: Supporting PSB for the next decade and beyond*, 8 March 2018, London: Ofcom, pp.1, 4 (https://www.ofcom.org.uk/data/assets/pdf_file/0026/111896/Public-service-broadcasting-in-the-digital-age.pdf).

I am a firm supporter of a PSB system which, in my view, provides a wide range of high quality, original, universally accessible content, free at the point of consumption. PSBs are obligated to provide programmes that appeal to audiences across the whole of the UK, including young and old people, the majority but also various minorities, those living in metropolitan areas and those in remote places. In the midst of globalisation, commercialisation and deregulation, it is becoming increasingly apparent that regulated PSBs, rather than the free market, is the answer to the continuing supply of public service output. This stance is reflected in my publications³ which go through the challenges and threats facing PSBs but also discuss PSBs' responses to market challenges and list a number of policy recommendations for a thriving PSB system in the digital age. Therefore, this submission is largely in favour of sustaining properly funded, universally available PSBs, who can deliver quality and original programming, alongside impartial and trusted news in the era of fake news and post-truth politics.

³ Iosifidis, P. (2010) *Reinventing Public Service Communication: European Broadcasters and Beyond*, London: Palgrave Macmillan; Iosifidis, P. (2012) *Public Television in the Digital Era: Technological Challenges and New Strategies for Europe*, London: Palgrave Macmillan; Iosifidis, P. (2013) *Global Media and Communication Policy*, London: Palgrave Macmillan.

Section 2: Responses to the Questions in the Call for Evidence

Question 1) What is the value of public service broadcasting? Is the concept becoming outdated? Does public service broadcasting do enough to reflect and serve the demographics of the UK? In answering respondents may wish to consider characteristics such as: a) age, b) gender, c) ethnic background, d) the nations and regions of the UK, e) mental and physical ability, f) ability to pay for services.

PSB is broadcasting intended for the public benefit, or the public interest, rather than purely commercial interests. It has a long tradition in the UK and its main purpose remains to inform, educate and entertain. PSB should fulfil certain requirements as part of the allocation of licences. These requirements mainly concern the provision of impartial and trusted news. In fact, the values of PSBs are primarily the values of good and investigative journalism. The public expects PSBs to be especially good at applying accuracy, objectivity and balance in the reporting of news and current affairs. The issue of trust in news is becoming even more important in today's era of 'fake news' and post-truth politics, characterised by the spreading of hatred, misinformation and disinformation especially through social media networks. The provision of trusted news contributes to democracy, public sphere and culture. Another main requirement is for PSBs to be universally available to all people in the UK, irrespective of whether they live in metropolitan areas or remote places. The universality principle ensures that PSBs serve different regions and localities. By serving all the people, not only the majority but also various minorities, PSBs contribute to political pluralism and cultural diversity. This is achieved by offering a diet of high quality programmes that appeal to audiences across the whole of the UK. An important PSB obligation is to provide original content, including original drama and UK-originated programmes. Further, PSBs are expected to serve both adults and the younger generation and protect children, in particular, by not exposing them to public scrutiny and not depicting harmful content, sex or violence when children are viewing.

Broadly speaking, PSBs are delivering the above obligations well. Despite the challenges they are facing from multichannel TV and competitors like Amazon Prime Video and Netflix

who are now established players, as well as shifting viewing habits, the regulator Ofcom⁴ considers that the PSB system 'gives us viewing moments that bring the nation together and provoke national conversations' and 'inform our understanding of the world'. In other words, PSBs provide social cohesion and enhance the public sphere by encouraging critical and rational dialogue. Ofcom mentions that the PSB system has adapted well to past technological and market developments – the launch of Channels 4 and 5, commercial radio, multichannel and pay-TV, and digital switchover - so it can once again continue to thrive, provided it takes the right action, with the support of Parliament and the regulator. Ofcom also finds that audiences still value PSB, and overall, viewers believe that the system is delivering its goals. This includes the provision of trustworthy news, which is particularly important, to quote Ofcom, 'at a time when there is a proliferation of online news of varying degrees of accuracy, including outright 'fake news'.

Question 2) What are the consequences of the rise of on-demand providers and the decline of linear television viewing for the production of original UK content for UK audiences?

There is a clear negative impact of the rise of on-demand providers and the decline of linear TV viewing for the production of original UK content for UK audiences. Whereas UK PSBs BBC, ITV, C4, C5 and S4C are obligated to provide original programmes that appeal to audiences across the whole of the UK, including original drama and UK-originated programmes, global on-demand players are under no such obligation. Therefore, it is expected that the latter will increasingly aim for the production of profitable, entertainment-oriented programmes with global appeal that are unlikely to contribute to the production of original UK content for UK audiences. According to Ofcom,⁵ Amazon Prime Video and Netflix are 'investing billions of pounds in programmes, dwarfing domestic UK budgets, but focused on a global audience'. The decline of linear TV viewing is likely to affect the production of original UK content for UK audiences. Ofcom⁶ finds that 'the main PSB TV

⁴ Ofcom, *Public service broadcasting in the digital age: Supporting PSB for the next decade and beyond*, op cit.

⁵ Ofcom, *Public service broadcasting in the digital age: Supporting PSB for the next decade and beyond*, op cit.

⁶ Ofcom, *Public service broadcasting in the digital age: Supporting PSB for the next decade and beyond*, op cit.

channels still account for half of all viewing; though investment in original UK programmes – steady in cash terms – has fallen appreciably taking account of inflation’.

The substantial programme budgets of the big global VoD services are allowing them to produce high quality programming (especially drama), albeit serving a global, not necessarily a UK audience. This is in turn driving up costs, especially for premium drama, as the cost per episode of high end drama is now as much as £7.8. In 2017, Netflix had a content budget of £6.9 billion and this compares to £2.6 billion for UK-originated content for the PSBs combined in 2016.⁷ It is becoming increasingly difficult for traditional broadcasters, including PSBs, to compete with these giants and keep up the investment in original content. For example, the BBC’s own investment in UK originated content has fallen from £1.5 billion to £1.3 billion in real terms since 2008.⁸ But for PSBs to differentiate themselves from the global players and maintain a large UK audience they are required to invest at higher levels in UK content. This can only be achieved through sustainability of their funding and regulatory support. In terms of funding, ‘PSBs may be able to negotiate retransmission fees with platforms to boost revenues and exploit further the commercial opportunities of increased personalisation and data-driven advertising’.⁹ But they also need the backing of the regulator. In my view, such support can be justified on two grounds: PSBs are universally available across the UK; and they deliver important public service objectives as described in Q1 above.

⁷ Ofcom, *Public service broadcasting in the digital age: Supporting PSB for the next decade and beyond*, op cit.

⁸ Ofcom, *Public service broadcasting in the digital age: Supporting PSB for the next decade and beyond*, op cit.

⁹ Ofcom, *Public service broadcasting in the digital age: Supporting PSB for the next decade and beyond*, op cit.

Question 3) What has been the effect of changes in the market on the UK television production sector more widely, including on training, job opportunities and the business models of independent producers?

In this Question I'll focus on the effects of market changes on **independent producers**. So-called 'Indie' producers can be defined as those not owned by a TV broadcaster or by major non-UK parent TV company. In the UK the definition of an 'independent' television producer has acquired legal significance since the 1990 Broadcasting Act introduced compulsory access quotas for transmission of independently made programmes on PSB channels. Similarly, by way of ensuring compliance with compulsory quotas in the European Broadcasting Directive, 'independent' producers are defined under the auspices of EU legislation (AVMS Directive 2010/13/EC). The UK indie sector has been very successful and in 2014 generated £2.9bn in revenues, while 30% of these revenues were generated from overseas markets.¹⁰ However, as growth contributed to scale and greater commercial success, this triggered a wave of takeovers of many of the UK's leading independent producers from 2004 onwards, often by US media conglomerates. Ofcom observed that, despite consolidation, 'there remains a diverse and vibrant SME production sector and the system continues to promote very high levels of low market entry'¹¹, thus remaining open to new voices and creative renewal. This means there is no obvious case for dismantling measures that have served so well in building the prosperity of the sector. However, preliminary findings of an original empirical study funded by the UK Economic and Social Research Council (ES/N015258/1)¹² raise concern about the long-term implications for industry and content of ongoing re-configurations in ownership of the production sector. The study notes that the intention on achieving sustained commercial success and organic growth independently may signal an important turning point in the evolutionary development of the UK's indigenous television production sector. It nevertheless points to one potentially hopeful sign: the emerging phenomenon of leading UK producers who, having worked for multinationals, now want to set up their own creative enterprises, for example, Expectation Entertainment launched in 2017 by former Endemol Shine group president Tim Hincks and former ITV Director of Television Peter Fincham.

¹⁰ Ofcom, *Review of the operation of the television production sector: A report for the Secretary of State for Culture, Media & Sport*, 23 December 2015, London: Ofcom, p.2.

¹¹ Ofcom, *Review of the operation of the television production sector*, op cit. p.6.

¹² UK Economic and Social Research Council (ES/N015258/1) study 'Television Production in Transition: Independence, Scale and Sustainability'. Principal Investigator: Professor Gillian Doyle.

Question 4) Are the obligations on public service broadcasters appropriate? Does the regulatory regime allow them to do so?

The PSBs' obligations and the regulatory framework are still appropriate. But specifically, concerning programming obligations, the ability of PSBs to continue to meet such obligations largely depends on their sustainable income streams in an era of much higher costs of producing quality content. The level of BBC licence fee funding, currently at around £3.3 billion a year, is too small compared with that of VoD giants. In 2017 Netflix had a content budget of £6.9 billion, whereas the BBC's budget for UK-originated content accounted for £1.3 billion. It is obvious that, while the licence fee is considered the most appropriate funding model for the current Charter period, its level may need reconsideration as technology and media consumption habits continue to develop. Meanwhile, it is not a secret that a long-term decline in advertising revenues is affecting all commercial public service broadcasters. Responding to a 2013 Ofcom consultation on the proposed programming obligations of the licences (Ofcom consulted on programming obligations that PSBs proposed should carry through into the new licence period¹³) the licensees told Ofcom that, in broad terms and with some amendments, their existing PSB obligations would continue to be sustainable during the next licence period. Clearly, in the long run, and as competition intensifies and programming costs increase further, commercial PSBs will need to reconsider benefits of being a PSB with the costs of delivering public service content. I tend to agree with Ofcom that 'if the benefits were at any stage to be outweighed by the costs, commercial PSBs could choose to stop being PSBs. The obvious next point to do so would be when their licences come up for renewal in 2024'.¹⁴

¹³ See <https://www.ofcom.org.uk/consultations-and-statements/category-1/c3-c5-obligations>.

¹⁴ Ofcom, *Public service broadcasting in the digital age: Supporting PSB for the next decade and beyond*, op cit, p.4.

Question 5) Have public service broadcasters responded adequately to market changes?

The simple answer is yes. This is proven by their continued popularity and audience satisfaction in a fiercely competitive market place. The main PSB TV channels still account for half of all viewing.¹⁵ I believe this remarkable achievement can be attributed to the PSB assets and, particular, their established audience relationships; the creation of long-running series such as *Coronation Street*, *Panorama* and *Match of the Day*; and the fact that they still broadcast live to millions. All this appeals to producers, advertisers (in the case of commercial PSBs), and viewers.

Question 6) How can commercial public service broadcasters fund original productions for UK audiences at a time of declining advertising revenues? How might public service funding regimes—including the BBC licence fee—be adjusted?

Commercial PSBs will only be able to fund original productions for UK audiences in future through sustainability of their funding, including identifying alternative means of funding. Commercial PSBs face weakened advertising revenues as TV advertising revenues, long resilient, were down by 4% in 2017.¹⁶ It follows that these broadcasters need to find ways to reduce their reliance on traditional advertising revenue. ITV, for example, has reduced its reliance on traditional advertising revenue to 44% and, according to its December 2018 report, it is making good progress as it invests in their *More than TV* strategy – repositioning the ITV brand, developing their data and digital capabilities, increasing their ability to offer addressable advertising and expanding their direct to consumer activities. The report also

¹⁵ BARB data in Ofcom, *Public service broadcasting in the digital age: Supporting PSB for the next decade and beyond*, op cit, pp.4-5.

¹⁶ Ofcom, *Public service broadcasting in the digital age: Supporting PSB for the next decade and beyond*, op cit, p.11.

notes that cost savings, which will partly offset this essential investment are on track.¹⁷ Similar moves can be made (or have already been made) by other commercial PSBs such as Channel 4 and Channel 5 who are dependent on commercial revenues, chiefly advertising (Channel 4, for instance, depends on advertising and sponsorship for 94% of its revenue). I believe that the Chief Executives of these broadcasters will be in a better position to submit more detailed and updated information on this issue.

As far as the BBC licence fee is concerned, the issue of retaining the licence fee as a method of funding the public broadcaster in the digital, multichannel era has always been controversial. This is not the place to make a case for preserving the licence fee, but it should be noted that in my publications I defend the licence fee as the most suitable funding mechanism for the BBC chiefly because it enables the broadcaster to respond to the needs of the public rather than commercial considerations. But the 2010 funding cuts, combined with the 2015 funding deal (which allows the licence fee to rise by inflation in exchange for the corporation covering the £650 million annual cost of free television licences for the elderly) has put pressure on the BBC's licence fee revenue. In November 2018, the BBC launched a consultation on licence fees for older people. As it stands, any household with a person over 75 is exempt from paying the annual bill of £150.50 for the broadcaster's products. That Government-funded scheme - which is expected to cost £745m by 2021/22 - comes to an end in June 2020. It is for the BBC to decide on any future scheme and to pay for it. The consultation puts forward a number of options and the BBC's board will make a decision by the summer of 2019. In my view, the option of withdrawing it from some households (the poorest ones) and shutting down just a few services sounds most appealing (and perhaps less controversial).

¹⁷ ITV Report, 31 December 2018. At <https://www.itvplc.com/~media/Files/I/ITV-PLC/documents/reports-and-results/itv-preliminary-full-year-results-for-27-02-2019-updated.pdf>

Question 7) How important is prominence for public service broadcasters? Can it be maintained in the face of rapid technological development and greater personalisation of content?¹⁸

Prominence of PSBs within the multi-platform distribution environment is an issue of vital policy importance, and we welcome the Committee's attention to this topic. While broadcast channel line-ups and EPGs have long been regulated to ensure prominence for PSBs, the algorithmically curated interfaces of smart TVs and other internet-connected viewing devices constitute a **dynamic, opaque and personalized distribution environment** that poses a significant challenge for existing regulatory frameworks.

New approaches are needed to ensure PSB prominence in this environment. Existing Ofcom prominence rules on channel numbering and homescreen tile position are essential but insufficient, because emerging television technology is increasingly oriented to voice search, personalised recommendations, and other emergent discovery tools which are out of scope of current regulation.

British PSBs have made their views clear on the need for updated prominence rules. The Director-General of the BBC, Tony Hall, has called for new legislation to be passed in the UK for PSB to ensure 'proper, protected PSB prominence [for BBC content] on the first page for ANY significant device – be it a set top box; smart TV; or a games console sold in the UK', claiming that 'we are sleepwalking towards a world in which children and young people barely encounter PSB content'.¹⁹ Channel 4 CEO Alex Mahon has also echoed these concerns:

¹⁸ The author of this section (Q7) is Dr Ramon Lobato, Senior Research Fellow, School of Media and Communication, RMIT University, Melbourne (ramon.lobato@rmit.edu.au).

¹⁹ Tony Hall speech to parliament, Monday 11 June 2018, <https://www.bbc.co.uk/mediacentre/speeches/2018/tony-hall-prominence>.

When you turn on a smart TV (...) the positions on those screens are governed by the auction of spots and by negotiation with the manufacturers ... Which news gets promoted to you first? Is it the BBC, is it Channel 4, or is it Russia Today? Or is it a clickbait fake news farm? The truth is it's completely up to whoever owns that platform and they're free to sell that spot off to the highest bidder.²⁰

Mahon's comments underline the public policy significance of smart TV platforms which, as the last link in the television distribution chain, work to organise, curate and sometimes restrict the content available to the user. In this sense, control of these platforms means control of user attention, experience and discovery.

We support the normative goal of ensuring diverse, accessible and accountable TV distribution environments in which PSB content can be readily accessed. The policy challenges ahead are about the *means* through which this goal can be realised. To this end, we would urge closer scrutiny of the intermediaries that control the distribution pipeline in connected-TV environments. These intermediaries include:

- *Smart TV platforms* – These platforms are responsible for the display, organisation and recommendation of content on the TV home screen. The leading players in this market include LG (webOS), Samsung (Tizen), Google (Android TV), Roku (Roku TV OS; Roku also licenses its platform to many smart TV manufacturers), Apple (Apple TV), and Amazon (Fire TV OS).
- *Streaming devices* – Streaming boxes, dongles, and other media players typically feature one of the above-mentioned operating systems. Devices by Roku and Amazon are sold at very low prices in order to bring users into the ecosystem and then leverage control of data and viewing.
- *Game consoles* – Consoles such as PlayStation and Xbox are often used by viewers as their default device for accessing video content. Each has its own content store.
- *Internet-connected DVD players and hard-drive / personal video recorders (HDR and PVRs)*

²⁰ Cited in Andrew McDonald, "BBC and Channel 4 urge action over PSB prominence," *Digital TV Europe*, 12 June 2018.

The commercial ‘platform power’²¹ of the major US tech companies should not be understated. Market research from IHS Markit suggests that Android commands a 40% global share of the smart TV operating system market.²² Given the strong integration of Android with YouTube and Google Play Store, this has implications for cultural and media policy, especially as regards media diversity and marketplace accessibility.

The user interface design norms that characterise this new TV environment have emerged from commercial software industries, and have not been designed with national broadcast and media regulation objectives in mind. Smart TV platforms, especially, are unregulated in terms of how they display, organise and restrict content, creating a regulatory disparity with broadcast and pay-TV. Furthermore, app stores within the various platforms are privately governed through terms of service agreements, and there is no formal obligation for platforms to carry PSB services or other competitors’ apps. In practice, the app stores have not unreasonably denied access in this way, but the possibility of such discrimination in future cannot be discounted.

In our view, it is important that policymakers take into account the **emerging forms of integration, control and bias** that smart TV platforms introduce into the television viewing experience. We suggest the following principles to guide future policy reform in this area:

- *increased transparency of commercial arrangements between smart TV / connected-device platforms and the services/apps they carry.* This should address commercial practices such as paid preinstallation, preferential integration into search results, and preferential homescreen placement, especially where it detrimentally affects the discoverability of PSB content.

²¹ Tom Evens and Karen Donders, *Platform Power and Policy in Transforming Television Markets* (Basingstoke: Palgrave, 2018).

²² IHS Markit, “Smart TV Share Jumps to 70 Percent of TV Shipments”, 17 July 2018. <https://technology.ihs.com/604804/>. This 40% figure includes generic Android streaming boxes using the Android mobile OS, as well as Android TV devices.

- *increased transparency of recommender systems*, especially where evidence exists that such systems favour content from their own and partner apps to the detriment of PSBs and other competitors.
- *a principle of 'search neutrality'*, i.e., no preferential treatment of own and partner products over PSB and other content.
- *compulsory carriage of competitor apps and PSB services within app stores*, to prevent unreasonable denial of marketplace access.
- *increased disclosure and regulatory scrutiny of personal data collection through smart TV platforms*, e.g., by covert tracking apps such as Samba
- *recognition of the escalating development and other technical costs borne by PSBs who must make their content available to viewers across a fragmented platform ecosystem*, with each platform requiring its own bespoke feeds and metadata formats

Question 8) Should there be new regulation of on-demand services? Does the revised Audio-visual Media Services Directive provide appropriate measures to ‘level the playing field’? How could on-demand services be encouraged to produce more content in the UK?²³

Yes, there should be new regulation of on-demand services in order to create a ‘level playing field’ in the contemporary converged TV and video market in which VoD players and UK broadcasters compete for audiences and programmes. True, VoD services mainly invest in content with global appeal, while PSBs mainly attempt to attract UK viewers. However, the television and video market is now converged and therefore VoD and traditional TV can now be considered as close substitutes (i.e. competing in the same market). With the notable exception of news, where there is no VoD equivalent to BBC, C4 and C5 (or even Sky News), a substitutive relationship between PSBs and VoD services holds for most of the other programming genres, including drama and comedy. Regulation should reflect this technological development.

In fact, the revised Audio-visual Media Services Directive (AVMSD) provides some concrete measures to ‘level the playing field’. For example, the Directive provides increased obligations to promote European works for on-demand services. The latter need to have at least a 30% share of European content in their catalogue. Most importantly, they need to ensure the **prominence** of this content (Article 13, paragraph 1). Member states may require on-demand services to contribute financially to the development of European works, either through a direct investment in content or a contribution to national funds, both proportionate to the revenues earned by the on-demand service targeting audiences in that particular country. Rules, such as prohibition of advertising for cigarettes and other tobacco products, and alcoholic beverages aimed specifically at minors, now apply to on-demand services in the EU. The rules on traditional broadcasting have become, on the other hand, more flexible, amending

²³ Some information about Question 8 was provided by Dr Imir Rashid, Associate Lecturer, Manchester Metropolitan University.

quantitative limits on TV advertising, with the aim to allow TV services to be more competitive with other services²⁴.

In addition, the scope of the Directive has been extended to cover 'video-sharing platforms', such as user-generated content on YouTube, as well as audio-visual content shared on social media services, such as Facebook. In particular, the AVMSD states that Member States should ensure that video-sharing platforms put in place measures to:

- protect minors from harmful content (which may impair the physical, mental or moral development); access to which would have to be restricted; and
- protect the general public from incitement to violence or hatred and content constituting criminal offences (public provocation to commit terrorist offences, child pornography and racism or xenophobia).

One of the major affected parties of the revised AVMSD – the European PSBs – have been in general supportive of introducing rules with regard to strengthening the level playing field between linear, on-demand and over-the-top (OTT) distributed audio-visual services.

In terms of procedures: in Nov 2018 the EU Council formally adopted the Directive. Member States will have 21 months to transpose it into their national legislation. But as it is the case with every European Directive, national media regulators are given some leeway on how to implement these rules on specific national contexts. The transposition of the revised AVMSD into national legislator frameworks is a legal requirement, but specific rules are likely to be open to interpretations. For example, Recital 5 of the revised Directive states that while its aim *'is not to regulate social media services as such, social media services should be covered if the provision of programmes and user-generated videos constitute an **essential functionality** of that service. The provision of programmes and user-generated content could be considered to constitute an essential functionality of the social media service if the audiovisual content is not merely ancillary to or constitutes a minor part of the activities of that social media service.'*

²⁴ Council of Europe Note from General Secretariat of the Council to Permanent Representatives Committee, Interinstitutional File 24 April 2017. Available at: <http://www.statewatch.org/news/2017/apr/eu-council-ams-8242-17.pdf>

Question 9) What should the relationship be between public service broadcasters and on-demand platforms? What are the risks and opportunities of collaboration, for example in coproduction?

Given that PSBs and on-demand platforms compete in the same market for most programming genres (see response to Q8 above) one may expect that they could aim for collaboration in coproduction. After all, the global reputation of the UK creative industries and the BBC in particular, backed by the immense reach of the English language, would provide a strong incentive for a closer relationship between PSBs and on-demand players. However, there is an enormous gap in the level of their programming budgets, with very well-funded online platforms on one hand and PSBs with moderate funds on the other. This may provide an obstacle for a productive collaboration. As Baroness Kidron mentioned during the Oral Evidence I gave on 2 April 2019, 'Apple entered the streaming market in 2017 with a \$1 billion programming budget, but it has announced that it does not intend to co-produce with the UK's public service broadcasters'. This means that the likes of Apple, Netflix & YouTube can be selective when it comes to investing and coproduction, with the sole criterion being purely financial. Furthermore, regulated PSBs aim primarily at attracting national audiences, whilst largely unregulated on-demand platforms aim to appeal to international ones. Such discrepancy in regulation and aims makes it difficult to establish working relationships.

In my view, adequately funded PSBs, operating under a right regulatory regime (by this, I refer to regulation that promotes competition and innovation in a converged media market), can maintain high levels of investment in quality and original content. Perhaps PSBs need to work together to give themselves greater scale and an opportunity to share costs and risks, rather than seeking collaborative opportunities with on-demand platforms. But they need to 'invest in new methods of distribution, and find fresh ways to reach younger people who are turning away from traditional TV'.²⁵ The successful launch of on-demand subscriber service 'Britbox' in the US, a partnership between ITV and the BBC, provides a very good example of how partnerships between PSBs can give themselves greater scale and reach. I discuss this initiative in more detail in Q10 below.

²⁵ Speech by Sharon White to Enders/Deloitte conference, 8 March 2018. At <https://www.ofcom.org.uk/about-ofcom/latest/features-and-news/british-tv-digital-age>

Question 10) What are the implications of ‘Britbox’? Is there scope for more collaboration amongst public service broadcasters? What more could PSBs do to compete with on demand services?

Britbox is an agreed BBC and ITV joint venture for a Netflix-style streaming service to be launched in the UK in the second half of 2019. Channel 4 was also reportedly expected to have been involved in the talks, but this is not confirmed at the time of writing. Britbox is already present in the US and has made a modest impact after two years of operation there with about half a million subscribers.²⁶ The forthcoming UK-based pay streaming service is expected to provide access to archive British TV shows and commission new programmes.

The new streaming venture is in fact a step born of necessity as both ITV and the BBC are losing ground to rival TV services like Netflix and Amazon Prime Video. Earlier attempts to launch a joint streaming service called Project Kangaroo in 2009 along with Channel 4 were prevented by the Competition Commission on grounds of competition. That was a wrong decision. As Google’s then chief executive Eric Schmidt suggested at the Edinburgh Television Festival back in 2011, it appears that the UK industry is being stifled and prevented from innovating and reaching its potential by over-weaning regulation. Schmitdt referred to the example of UK regulators blocking project Kangaroo, in his words, ‘in case it might be too successful’ as ‘absurd’ when delays in developing an indigenous UK online streaming service can only serve to help larger rivals from overseas.²⁷ Actually, the spectacular growth of Netflix and other rivals over the last years underscores the prescience of Schmidt’s analysis and, although discussions are now underway amongst ITV and the BBC about launching the Britbox project, critics may argue that such a venture is coming to the marketplace late.

There is some truth in that criticism, but the fact that Britbox has currently the backing of the competition authorities is a positive sign and means that regulators has learned their lessons. In my view, Britbox will not be a British Netflix! But will certainly make at least a modest impact in an already crowded market in which Netflix seems to be shaping TV’s future and other tech

²⁶ Robert Mitchell, Britbox subscribers hit half a million, *Variety*, 17 January 2019. At <https://variety.com/2019/tv/news/britbox-hits-half-million-subscribers-1203110468/>

²⁷ Tim Bradshaw, Google chairman attacks UK media red tape, 26 August 2011. At <https://www.ft.com/content/b026cce4-d006-11e0-81e2-00144feabdc0>

giants like Disney and Apple are announcing the launch of their own streaming services. However, Britbox is likely to enhance its chances of success if other PSBs like C4 could participate and contribute with their own programming library and archives; also, the monthly cost of the service should be between £5-7 in order to compete with rivals like Netflix. In any case, I believe free-to-view BBC's iPlayer, together with ITV's Hub and C4's 4oD will remain the main on-demand services.

International Context:

The blocking of project Kangaroo is not unique in Europe. In **France**, for example, indigenous VoD services have been slow to take off due to overregulation. Specifically, strict media technology laws have imposed a long delay between a film's theatrical release and its availability on a VoD platform. Major VoD services such as Canal Play and Video Futur wanted to get a foothold in the market before Netflix arrived in the country, but that was initially blocked by regulators.

Slow development of VoD services are also due to piracy, as the **Spanish** example shows, where anti-piracy laws were introduced as late as 2012.

In terms of collaboration between a telecoms company and a broadcaster to compete with on demand services, one can refer to **Italy**, where Telecom Italia and Canal Plus have collaborated to offer VoD service TIMvision.

An additional point I wish to make is that VoD services have been most successful in mature markets, including the UK and most Nordic countries, where there is high broadband penetration and where people are familiar with streaming services.

Finally, let me stress that we need good European services to preserve the place of national industries in an increasingly globalised world of VoD services, dominated by US platforms. This should be accompanied by a right regulatory regime and I was pleased to see that the revised AVMSD has provided measures to level the playing field and also provided increased obligations to promote European works for on-demand services (see answer to Q8 above).

During the Oral Evidence session that I gave to the Committee together with Professors Patrick Barwise and Jeanette Steemers on 2 April 2019, Baroness Kidron put on the record a further question and the Chairman asked us to write to the Committee in response. There follows the two-part Question and my Response.

Baroness Kidron: My question comes in two parts. One is that we would very much like to hear from you about alternative funding models. You have all touched on this at various points, but we are particularly interested in what is happening in Germany, France and so on and in looking in the round at where the funds could come from.

Answer to this part of the question:

Let me start by emphasising that the UK PSB system is by far the most successful in Europe and for this reason other EU countries have incorporated elements of this in their respective national broadcasting systems. It follows that it is more likely for other countries to be interested in what is happening in the UK broadcasting scene, including looking for alternative funding models, rather than the other way round. The UK also has a leading role in the implementation of online services, so again it is for other countries to learn relevant lessons. Having said this, the fact is that public service models across Europe vary greatly in terms of funding methods. The UK model of exclusively funding the BBC by the licence fee can only be found in the Nordic countries of Denmark, Sweden and Norway, whereas most other countries (particularly in southern Europe) have established a dual funding system consisting of the licence fee and advertising.

In my response, I'll only focus on a few large European countries. It can be seen below that the PSB system closer to that of the UK in terms of funding and programming quality is the German one, whereas the southern European countries of Italy and France have established a mixed funding model of the licence fee and commercial revenues as a funding method for their PSB, whereas the output of the respective public channels has become increasingly commercial, responding to advertisers' demands rather than audience needs.

In **Italy**, the national broadcaster RAI (Radiotelevisione italiana) is funded up to 70% from the licence fee, while the rest is being paid for by advertising revenue. Recently, there has been a debate about the licence fee, which is considered by some as an unpopular tax to fund 70% of radio and TV programmes of RAI. Former prime minister Matteo Renzi, leader of the centre-left Democratic Party, even suggested abolishing the licence fee. This has caused heated discussion and controversy. Under the current government, the annual fee was reduced from €100 to €90. Today, 26.6% of broadcasting by RAI's three main TV channels are intended for information and analysis, 12.4% for cultural affairs, and 10% and 16% respectively for foreign films and entertainment.

The **French** public TV broadcasting service France Télévisions (consisting of France 2, France 3, France 5, France Ô, and France 4) has been subject to criticism for its entertainment-oriented output. The main national TV broadcaster France 2 (13% market share) has for a long time been torn between two aims: to compete with the main commercial broadcaster TF1; and offer quality programming. The situation has worsened since France 2 has been banned from carrying advertising after 8pm, for it has suffered a budget loss of €500 million. President Emmanuel Macron has reportedly described the state of public broadcasting in the country, according the magazine L'Express, as a 'disgrace to the Republic'.²⁸ Macron plans to extend the licence fee to people with internet access and change the way to be collected as it is currently linked to the residence tax.

In **Germany**, public service broadcasters ARD and ZDF, mainly funded by the licence fee but also advertising and sponsorship, compete fiercely with advertising funded commercial ones in a regulated dual broadcasting system. Every household in Germany has to pay €17.50 a month for the licence fee, thus making available to the public broadcasters about €8 billion a year to make programmes. ARD maintains and operates a national television network, and with a 11.5% audience share has a budget of €6.9 billion whereas ZDF, with a 13% audience share, is based in Mainz but also maintains permanent bureaus in the 16 Lander capitals. Public service broadcasters have a cultural and news responsibility to fulfil. Their news and talk shows are highly regarded by Germans as the most reliable source of information in the digital age.

²⁸ L'Express, Pour Macron, l'audiovisuel public est "la honte de la République", 15 Dec 2017. At https://www.lexpress.fr/actualite/politique/pour-macron-le-service-public-audiovisuel-est-la-honte-de-la-republique_1966323.html

Baroness Kidron: We are also interested in the likely impact of the revised AVMS and whether you have any views on it. If you would not mind writing to us, we would be very grateful.

Please see my response to Q8 above.

END